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April 26, 2019

VIA CERTIFIED U. S. MAIL
RETURN RECEIPT REQUESTED

MAY 02 2019

Mayor Greg Ponciano
City of Colusa
425 Webster Street
Colusa, CA 95932

Mr. Jesse Cain, City Manager
City of Colusa
425 Webster Street
Colusa, CA 95932

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Jesse Cain and Mayor Ponciano:

This firm represents the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA") caused by the City of Colusa's ("City" or "Colusa") failure to comply with the terms and conditions of (1) *Waste Discharge Requirements for the City of Colusa Wastewater Treatment Plant Colusa County*, Order No. R5-2016-0062-01, as amended by Order No. R5-2018-0018, NPDES No. CA0078999 ("Amended 2016 NPDES Permit"); (2) *Waste Discharge Requirements for the City of Colusa Wastewater Treatment Plant Colusa County*, Order No. R5-2016-0062, NPDES No. CA0078999 ("2016 NPDES Permit"); and, (3) *Waste Discharge Requirements for the City of Colusa Wastewater Treatment Plant Colusa County*, Order No. R5-2008-0184, NPDES No. CA0078999 ("2008 NPDES Permit"). The Amended 2016 NPDES Permit, the 2016 NPDES Permit, and the 2008 NPDES Permit are referred to collectively as "the NPDES Permits."

As required by the Clean Water Act, CSPA puts the City on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit Letter ("Notice Letter"), CSPA intends to file suit in Federal District Court pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §1365(a), against the City for the violations described in this Notice Letter.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the owner or managing agent of the facility responsible for the violations, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, and the Executive Officer of the State of California's State Water Resources Control Board ("State Board"). *See* 40 C.F.R. § 135.2.

CSPA intends to file suit to seek injunctive relief pursuant to CWA Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), declaratory relief, and such other relief permitted by law to

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remedy the CWA violations outlined below. CSPA will also seek civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, set forth at 40 C.F.R. § 19.4 (2009). These provisions authorize civil penalties for each separate violation of the Clean Water Act of up to \$37,500 per day per violation for all Clean Water Act violations occurring after January 12, 2009, and up to \$53,484 per day per violation for all violations occurring after November 2, 2015. Finally, CSPA will seek to recover its litigation costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

I. ORGANIZATION GIVING NOTICE OF CLEAN WATER ACT VIOLATIONS

CSPA is a 501(c)(3) non-profit public benefit conservation and research organization, with offices located at 3536 Rainier Avenue, Stockton, CA 95204. CSPA was established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality, wildlife and fishery resources, aquatic ecosystems and associated riparian habitats. CSPA accomplishes its mission by actively seeking federal, state, and local agency implementation of environmental regulations and statutes and routinely participates in administrative, legislative and judicial proceedings. When necessary, CSPA directly initiates enforcement actions on behalf of itself and its members to protect public trust resources.

CSPA's members use and enjoy the Sacramento River, Powell Slough, and their tributaries, as well as waters in and around the Sacramento-San Joaquin River Delta (the "Delta") for fishing, boating, swimming, bird watching, picnicking, viewing wildlife, and engaging in scientific study. Information available to CSPA indicates that Colusa discharges wastewater in violation of its NPDES Permits into an unnamed tributary to Powell Slough, which flows to the Sacramento River, which flows to the Delta and discharges into the Pacific Ocean. These illegal discharges of wastewater degrade water quality and harm aquatic life in these waters, and thus impair CSPA's members' use and enjoyment of these waters. Further, Colusa's illegal discharges of wastewater are ongoing and continuous. As a result, CSPA's members' use and enjoyment of these waters has been and continues to be adversely impacted by the illegal discharges of wastewater to waters used and enjoyed by CSPA's members.

II. THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES

Information available to CSPA indicates that Colusa provides wastewater collection, treatment, and disposal services to residents and businesses in the City of Colusa. Colusa's Public Works Division, Department of City Sewer and Water, is responsible for the day-to-day operation and maintenance of the sewage collection system ("Collection System"), which is owned and operated by Colusa. The City owns and operates the City of Colusa Wastewater Treatment Plant (the "Facility"), which provides sewer treatment services to a population of approximately 6,000. The Facility is located at 2820 Will S. Green Road, Colusa, CA. The City Manager is responsible for the day-to-day operations of the City of Colusa, including the Wastewater Treatment Plant. The Mayor is a member of the City Council, presiding officer over all City Council meetings, authorized to sign legal documents on behalf of the City, and represents the City on local, state, and national levels.

III. THE WASTEWATER TREATMENT PLANT, AND THE CITY'S NPDES PERMITS

The City owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the residents and business of the City of Colusa. Treated municipal wastewater is discharged to Powell Slough, a tributary to the Colusa Trough, and to the Colusa Basin Drain, all of which are waters of the United States.

On December 5, 2008, the California Regional Water Quality Control Board Central Valley Region ("Regional Board") issued Waste Discharge Order R5-2008-0184, which rescinded Order R5-2002-0020. Order R5-2008-0184 became effective on January 24, 2009 and remained in effect until October 31, 2016. On August 18, 2016, the Regional Board issued Waste Discharge Order R5-2016-0062, which rescinded the 2008 NPDES Permit. Order R5-2016-0062 became effective on November 1, 2016 and remained in effect until April 6, 2018. On April 6, 2018, the Regional Board amended the 2016 Permit, Order R5-2016-0062, to include new effluent limitations and other requirements regarding the waste discharge. The Amended 2016 NPDES Permit, Order R5-2016-0062-01, is the Facility's current NPDES permit.

All three operative NPDES Permits contain prohibitions against the discharge of wastewater that causes the natural temperature of the receiving water to rise more than five degrees Fahrenheit. NPDES Permits, Section V.A.15. While the City is required to measure temperature on a weekly basis, the 2016 NPDES Permit and the Amended NPDES 2016 Permit differ from the 2008 NPDES Permit in one way with regard to the temperature requirements of Section V.A.15. In the 2016 NPDES Permits, compliance with Section V.A.15 is determined by calculating the difference in temperature between the upstream and downstream sampling locations (RSW-001U and RSW-001D, respectively). The 2008 NPDES Permit allowed the City to measure temperature as a monthly average, and therefore compliance was determined on a monthly basis.

The Facility does not have the proper equipment to ensure that the temperature of the treated wastewater is cooled sufficiently prior to discharge into the receiving waters. As a result, the Facility often discharges wastewater that raises the natural temperature of the receiving water more than five degrees. From April 25, 2014 to November 1, 2016 – a period during which the 2008 NPDES Permit, and hence the monthly average method of measuring temperature were in effect – the City discharged wastewater that raised the natural temperature of the receiving water by more than five degrees during six months.¹ From November 2, 2016 to the present – the period during which the 2016 NPDES Permits, and hence the weekly compliance method were in effect – the City discharged wastewater that raised the natural temperature of the receiving water by more than five degrees during at least 28 weeks.

The City's ongoing and continuous discharges in violation of Section V.A.15 of its NPDES Permit are violations of the CWA and demonstrate serious problems with the City's

¹ Attached as Exhibit A is a list of each temperature measurement of discharges that violated Section V.A.15 of the NPDES Permits.

operation and maintenance of its Wastewater Treatment Plant.

IV. THE LOCAL WATERWAYS RECEIVING THE ILLEGAL DISCHARGES OF POLLUTANTS AND THE ENVIRONMENTAL IMPACTS FROM THOSE DISCHARGES

A. The Receiving Waters

Discharges from the Facility reach the Delta via Powell Slough, tributary to Colusa Trough, and to the Colusa Basin Drain, which is tributary to the Sacramento River (collectively "Receiving Waters"). The Sacramento-San Joaquin Delta, along with the San Francisco Bay, forms the largest estuary on the west coast of North America. The Sacramento-San Joaquin Delta is a 1,600-square mile area of channels and islands at the confluence of the Sacramento and San Joaquin Rivers. Water that is not diverted from the Delta to municipal and agricultural uses flows through to the San Francisco Bay Estuary. The Delta provides habitat to many species of aquatic wildlife, including multiple fish species protected by state and federal law. The Sacramento River and its tributaries provide habitat for aquatic species, as well as opportunities for wildlife viewing, fishing, and other water-related recreation such as swimming, wading and boating.

The Colusa Basin Watershed provides suitable habitat for some forty-four special-status wildlife species during certain times of year. The watershed provides suitable breeding habitat for nine federal or state-listed threatened or endangered species; bank swallow, California tiger salamander, Conservancy fairy shrimp, giant garter snake, Swainson's hawk, western yellow-billed cuckoo, valley elderberry longhorn beetle, vernal pool fairy shrimp, and vernal pool tadpole shrimp. The watershed also provides suitable breeding habitat for 18 wildlife species considered by the state as species of special concern or protected species; Mountain Plover, Western spadefoot toad, Western pond turtle, White-fronted goose, Western Least Bittern, Golden Eagle, Black Tern, Northern Harrier, Merlin, Short-eared Owl, Long-eared owl, Burrowing Owl, Loggerhead Shrike, Yellow Warbler, Yellow-breasted Chat, Grasshopper Sparrow, Yellow-headed Blackbird, and Tricolored Blackbird. The majority of these species utilize freshwater emergent wetlands, vernal pools, and/or riparian habitat; habitats that have been dramatically reduced compared to their historic distribution.

According to the State of California, the beneficial uses of the Colusa Basin Drain include contact water recreation, wildlife habitat, irrigation and stock watering, warm and cold freshwater habitat, warm migration, and warm spawning.² Chapter III of the Basin Plan sets forth the water quality objectives for the inland surface waters of the Sacramento and San Joaquin River Basins, including the Delta. Specifically, the Basin Plan states that "[a]t no time or place shall the temperature of COLD or WARM intrastate waters be increased more than 5°F above natural receiving water temperature."³ By discharging sewage wastewater that is not

² See Table II-1, Water Quality Control Plan, Sacramento and San Joaquin River Basins, at II-5.00.

³ See *Id.* at III-8.00.

properly cooled, the City has violated the Basin Plan, as well as its NPDES Permits. As such, the City's violations of the Clean Water Act directly harm CSPA's members' use and enjoyment of the Receiving Waters.

V. THE CITY'S DISCHARGES OF WASTEWATER THAT ELEVATE THE RECEIVING WATER'S TEMPERATURE VIOLATE ITS NPDES PERMITS

The Clean Water Act requires that all regulated dischargers comply with the terms and conditions of their NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1365. Any violation of the 2016 NPDES Permits or the 2008 NPDES Permit is an enforceable violation of the Clean Water Act. 33 U.S.C. § 1365(f). The City's NPDES Permits prohibit the discharge of wastewater that causes the temperature of the receiving waters to increase by more than five degrees Fahrenheit. *See* 2016 and 2008 NPDES Permits § V.A.15 ("The discharge shall not cause the following in the unnamed tributary to Powell Slough: 15. Temperature. The natural temperature to be increased by more than 5 °F.") The City has violated and continues to violate these provisions by regularly discharging wastewater that elevates the temperature of the unnamed tributary to Powell Slough by more than five degrees Fahrenheit. At a minimum, the City violated the 2016 NPDES Permits and the 2008 NPDES Permit on the dates set forth in Exhibit A (identifying 319 separate dates of violation).

CSPA believes that additional information will be discovered that indicates that City has not reported each and every temperature exceedance or has misreported temperature readings occurring within the last five (5) years. CSPA puts the City on notice that all temperature exceedances from the Facility occurring in the last five (5) years, as well as any future violations, whether specifically reported or not, will be included in this litigation.

Because compliance under the 2008 NPDES Permit was determined using a monthly average, each day of each month between April 25, 2014, and November 1, 2016 that the City has discharged wastewater that increased the average monthly temperature of the unnamed tributary to Powell Slough by more than five degrees Fahrenheit is a separate and distinct violation of Section V.A.15 of the City's 2008 NPDES Permit and the Clean Water Act. Because compliance under the 2016 NPDES Permits is determined on a weekly basis, each day of each week between November 1, 2016 and the present that the City has discharged wastewater that increased the temperature of the unnamed tributary to Powell Slough by more than five degrees Fahrenheit is a separate and distinct violation of Section V.A.15 of the City's 2016 NPDES Permit, the Amended 2016 NPDES Permit, and the Clean Water Act. The City's violations will continue each day it discharges wastewater in violation of the requirements of its 2016 NPDES Permits and the Clean Water Act. The City is subject to penalties for all violations of the NPDES Permits and the Clean Water Act occurring in the five (5) years prior to the date of this Notice Letter.

VI. CONCLUSION

CSPA has retained legal counsel to represent it in this matter. Please direct all

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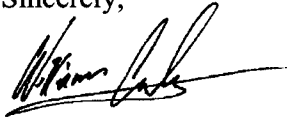
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communications to Andrew L. Packard and William N. Carlon at the Law Offices of Andrew L. Packard at the address/number below:

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
Telephone: (707) 782-4060
andrew@packardlawoffices.com
wncarlon@packardlawoffices.com

Upon expiration of the 60-day notice period, CSPA will file a citizen suit enforcement action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for the above-referenced violations. During the 60-day notice period, however, CSPA is willing to discuss effective remedies for the violations noted in this letter. If the City wishes to pursue such discussions prior to the initiation of litigation, we suggest that it initiate those discussions immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "William N. Carlon", with a horizontal line drawn underneath it.

William N. Carlon
Counsel for California Sportfishing Protection Alliance

cc: Bill Jennings, Executive Director, California Sportfishing Protection Alliance
Ryan R. Jones, City Attorney, City of Colusa

SERVICE LIST

VIA CERTIFIED MAIL

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Mike Stoker, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

William Barr, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Patrick Pulupa, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

EXHIBIT A

January 2015 - 31 Days of Violations			
Date	RSW-001D Temp.	RSW-001U Temp.	Difference
1/5/2015	55	45.8	9.2
1/12/2015	59.9	53.6	6.3
1/21/2015	56.6	50.7	5.9
1/27/2015	60	55.4	4.6
Average	57.875	51.375	6.5

October 2015 - 31 Days of Violations			
Date	RSW-001D Temp.	RSW-001U Temp.	Difference
10/5/2015	74.66	67.64	7.02
10/12/2015	80.78	77.9	2.88
10/19/2015	71.6	67.1	4.5
10/26/2015	68.18	60.8	7.38
Average	73.805	68.36	5.445

November 2015 - 30 Days of Violations			
Date	RSW-001D Temp.	RSW-001U Temp.	Difference
11/2/2015	64.58	59.9	4.68
11/9/2015	57.92	50.72	7.2
11/16/2015	59.18	49.64	9.54
11/23/2015	60.44	52.34	8.1
Average	60.53	53.15	7.38

December 2015 - 31 Days of Violations			
Date	RSW-001D Temp.	RSW-001U Temp.	Difference
12/1/2015	54.14	41	13.14
12/7/2015	58.1	52.16	5.94
12/14/2015	52.16	43.34	8.82
12/21/2015	52.16	47.66	4.5
12/28/2015	49.46	41.18	8.28
Average	53.204	45.068	8.136

November 1, 2016 - Present - 28 Weeks of Violations			
Date	RSW-001D Temp.	RSW-001U Temp.	Difference
12/27/2016	51.62	44.6	7.02
3/27/2017	62.78	56.66	6.12
4/3/2017	59.9	54.14	5.76
4/10/2017	62.06	54.14	7.92
9/25/2017	67.82	62.6	5.22
10/2/2017	64.76	58.82	5.94
10/23/2017	67.28	54.14	13.14
10/30/2017	69.26	63.68	5.58
11/6/2017	79.88	51.98	27.9
11/13/2017	82.22	60.26	21.96
11/23/2017	70.7	58.46	12.24
11/27/2017	67.82	57.56	10.26
12/14/2017	55.4	50.18	5.22
12/27/2017	59	53.78	5.22
1/2/2018	55.76	46.58	9.18
1/16/2018	60.08	53.24	6.84
1/22/2018	53.96	48.92	5.04
1/29/2018	57.38	50.18	7.2
2/12/2018	55.22	48.74	6.48
2/20/2018	50.72	43.16	7.56
3/26/2018	61.88	54.68	7.2
4/5/2018	66.56	60.44	6.12
9/24/2018	73.58	67.46	6.12
10/15/2018	62.96	50.36	12.6
10/29/2018	67.64	59.9	7.74
12/10/2018	58.28	51.62	6.66
12/26/2018	55.58	47.84	7.74
1/2/2019	47.84	41.18	6.66